IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2465 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAPOORCHAND MAGANLAL TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR MB FAROOQUI for Petitioner

MR KP RAVAL, APP, for Respondent No. 1

MR JC VYAS for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. This is an application under section 482 of the Criminal Procedure Code at the instance of the original accused, on the basis of a complaint filed by second respondent-complainant, alleging commission of an offence

by the accused under section 138 of the Negotiable Instruments Act.

2. It appears that the accused and the complainant were in a business run in a partnership, the disputes arose between the partners, that the disputes were settled through arbitration and the respective obligations were determined, resulting in a written settlement. Accordingly the liability of the accused was quantified, and according to the complainant certain cheques were issued by the accused in favour of the complainant in discharge of this obligation. In the present application I am concerned with the cheque for Rs.65000/- issued by the accused in favour of the complainant, the cheque being dated 5th July 1992. According to the complainant and the averments made in the complaint, this cheque dated 5th July 1992 issued by the accused in favour of the complainant was paid by the complainant into his bank account, but was dishonoured by the bank of the accused. It is stated that the reason for dishonour was that the drawer had issued instructions to his bank to "stop payment". As per the averments made in the complaint, the complainant had issued a notice of dishonour to the accused, specifically under section 138 of the Negotiable Instruments Act, dated 14th July 1992. The complaint alleges that the said notice was received by the accused on 18th July 1992.

3. A plain reading of clause (c) of the proviso to section 138 indicates that where the drawee of the cheque who has failed to realise the amount due to dishonour of the cheque issues a notice to the drawer of the cheque, the drawer of the cheque shall be punished under section 138 of the said Act, where the drawer fails to make payment of the said amount of money, within 15 days of the receipt of the said notice. As per the complaint itself the notice was received by the accused on 18th July 1992, and who was therefore entitled to 15 days time to make good the payment. However, the complaint has been filed on the 5th day after the notice was received by the accused i.e. on the 23rd July 1992.

4. The facts of the case indicate, and which are apparent form the certified copy on record, that the complaint is dated 23rd July 1992, that the court examined the complainant under section 200 of CrPC on the same day, and the court on the same day i.e. 23rd July 1992 took cognizance of the complaint and issued process against the accused. Obviously, therefore, the drawee of the cheque has not granted two weeks time to the drawer of the cheque to make good the payment. It is by now

well settled law that breach of clause (c) of the proviso to section 138 would render the complaint premature, and the same is, therefore, liable to be quashed and set aside.

5. It is accordingly so found and held. The complaint in question is quashed and set aside. Rule is accordingly made absolute.

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